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EXAMINER	
GUZO, D.	
ART UNIT	PAPER NUMBER
1636	17
10/24/00	

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

### ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run 4 mos. or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 9/25/00 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:

- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The proposed amendment changing the hybridization conditions and makes raises new issues which would require further search and/or consideration.

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 1-21, 36-38 and 41-45

However;

☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because \_\_\_\_\_  
- SEE ATTACHMENT -

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

DAVID GUZO  
PRIMARY EXAMINER  
*David Guzo*

Art Unit: 1636

### ATTACHMENT

With regard to the outstanding 35 USC 102(e) rejection of claims 1, 3-6, 8-11, 13-21 and 36-38, applicant's arguments have either been addressed previously by the examiner (See Paper #15, mailed 5/26/00) or are not sufficiently new or convincing to overcome the outstanding rejection. Also, given the non-entry of the After Final Amendment, applicant's arguments based upon said amendment are moot.

With regard to the outstanding 35 USC 112, 1st paragraph (deposit) rejection, applicant's representative appears to have misunderstood the basis of the rejection. If applicant claims a material (or recites a method using said material) by its depository address, then the skilled artisan, in order to practice the claimed invention, must have unrestricted access to the specific material deposited under the recited depository address. In order for the skilled artisan to have unrestricted access to this material and to insure the material availability, applicant must provide a statement that all restrictions on the availability to the public of the deposited material will be removed upon issuance of a patent. Obviously, if applicant is claiming material deposited by others at the ATCC, then applicant cannot insure that the specific material deposited at the ATCC will be available to the public for the life of a patent granted upon the instant application. Therefore, a separate deposit (and statement concerning removal of all restrictions on availability) by applicant of the material would be required to insure availability to the public for the life of any patent granted upon the instant application. Alternatively, applicant can obviate this rejection by deleting reference to the ATCC address in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo whose telephone number is (703) 308-1906. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Elliott, can be reached on (703) 308-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



David Guzo  
October 18, 2000